IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO.5076 OF 2005
IN
CRIMINAL APPEAL NO. 328 OF 2005

Mr.Kundaswami Munnaswami Devendra ..Applicant

Vs.

State of Maharashtra ..Respondents

...

Mr. M.K.Kochrekar, Advocate for Applicant
Mr. B.H.Mehta, A.P.P. for the State

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CORAM: SMT.V.K.TAHILRAMANI,J.
DATE : AUGUST 22,2005

P.C.

1. Heard both sides.

2. The applicant is seeking bail. The applicant had earlier preferred application for bail which came to be rejected. The applicant has been convicted under Section 395 of IPC and sentenced to R.I. for five years. The learned advocate for the applicant has submitted that the applicant has undergone more than three and half years of imprisonment and hence, on that count, he may be granted bail. He has further submitted that there

is no recovery at the instance of the applicant and the only evidence in respect of the applicant is his identification in the parade. As far as parade is concerned, he has submitted that there are several lacunae and identification by the witnesses in such parade, cannot be relied upon.

3. I do not find much merit in the above submission. Looking to the evidence on record, I find that holding of parade was not strictly necessary. It needs to be emphasised that there is no proposition of law or of practice having universal application to all cases that it is imperative to hold test identification of an accused person who is not known to the witnesses prior to the identification. In fact the absence to hold parade would not vitiate the evidence of identification of the accused person by the witnesses, for the first time in the Court.

. In this connection, it will be useful to refer to some of the observations made by the Supreme Court in **(2004) 3 Supreme Court Cases 116 (Ashfaq Vs. State)** in the said case it has been observed

that:

> . "Though as a matter of general principle, the point urged with reference to the omission to conduct earlier the test identification parade may be correct, the question as to whether there is any violation of the same in a given case would very much depend on the facts and circumstances of each case and there cannot be any abstract general formula for universal and ready application in all cases.:

. In the above case, it is further stated that in the case of **Ramnabhai Naranbhai Patel,** it is observed that:

> . "Two eye witnesses in the said case were assaulted and seriously injured in broad daylight, they could have easily seen the faces of the assailants and their appearance in their minds and the third witness who was said to have seen the fatal assault on her husband could also be easily considered to have got imprinted in her mind the faces of the accused and that, therefore, the omission to hold the test identification parade did not affect the credibility or truthfulness of their evidence".

. Thus, in such circumstances, it was observed in the case of **Ashfaq** that the accused were present in the house for quite some time holding the witnesses

at ransom by directing and using threat to relieve them of the valuables on which they could lay their hands and it is too much to claim, in spite of all this, that the evidence of P.Ws. 2, 3 and 10 could not be either sufficient to properly identify the accused or relied upon against the accused in the absence of proper test identification parade.

4. In the present case, it is seen that the offence took place in broad day light at 1.30 p.m. and bank came to be looted at the point of deadly weapons. The incident did not last for a few seconds but it lasted for a long time, in such case holding of parade was not strictly speaking necessary.

5. The learned A.P.P. on the other hand has pointed out that the applicant is an habitual criminal and he was involved in 13 cases of similar nature. The details of the said cases are as under:

1] CR No.498/2001 u/secs.170,420 r.w.34 of IPC of Vakola Police Station;

2] CR No.509/2001 u/sec. 379 of IPC

of Vakola Police Station

3] CR No.510/2001 u/secs.399, 402 r.w.34 of IPC & 25 of Arms Act of Vakola P.St.;

4] CR No.233/1997 u/secs.394, 397 r.w.34 of IPC of Bandra Police Station;

5] CR No.374/1999 u/secs.394 r.w.34 of IPC of Bandra Police Station;

6] CR No.377/2001 u/secs.392,397 r.w.34 of IPC & 3 and 25 of Arms Act of Bandra Police St.;

7] CR No.31/1995 u/secs.341, 392, 397 r.w.34 of IPC and 3 and 25 of Arms Act of CRF Police Station;

8] CR No.288/1995 u/secs.392, 427 r.w.34 of IPC of Byculla Police Station;

9] CR No.317/1997 u/secs.392, 472 of IPC of Matunga Police Station;

10] CR No.114/1997 u/secs.398 r.w.34 of IPC of Khar Police Station;

11] CR No.264/1999 u/secs.341, 393, 394 and 397 of IPC of Cuffe Parade Police St.;

12] CR No.388/1999 u/secs. 379 r.w.34 of IPC of Chembur Police Station;

13] CR No.293/1999 u/secs. 392, 397, 452 r.w.34 of IPC and u/secs. 3 and 25 of Arms Act of Naupada Police Station.

6. The learned A.P.P. has submitted that in view of the antecedents of the applicant, it is apprehended that if he is released on bail, he will again indulge in similar offences. I find

apprehension on the part of the prosecution to be quite correct in view of the antecedents of the applicant. In this view of the matter, I am not inclined to grant bail to the applicant even though he has been in custody for over three and half years.

7. Hearing of the appeal is expedited. Office to prepare the paper books expeditiously and place the matter on the final hearing board within a week of the papers books being ready.

8. Application is disposed of.

[V.K.TAHILRAMANI,J.]